



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse15080595

[REDACTED]
Complainant,

v.

ASCENSION HEALTH AT HOME,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission,") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(c).

On August 17, 2015, [REDACTED] ("Complainant") filed a Complaint with the Commission against Ascension Health at Home ("Respondent") alleging discrimination on the basis of sex/pregnancy in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*). Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent removed Complainant from the schedule because of her pregnancy. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she requested an accommodation; (3) Respondent failed to accommodate the request; and (4) Respondent accommodated other employees with a similar ability or inability to work. It is evident that Complainant is a member of a protected class by virtue of her sex and pregnancy and that she suffered an adverse employment action when Respondent removed her from the schedule. Moreover, evidence shows that Respondent failed to accommodate Complainant's work restrictions despite evidence that it accommodated other employees with a similar ability or inability to work.

By way of background, Complainant worked for Respondent as a Home Health Aide. At all times relevant to the Complaint, Complainant's duties included but were not limited to bathing patients, feeding patients, making their beds, brushing their teeth, and shaving male patients (when necessary.) During the course of her tenure with Respondent, Complainant sustained a workplace injury on or about July 29, 2015. Pursuant to policy and procedure, Complainant visited



Respondent's medical center and was permitted to return to work with a lifting restriction of no more than 20 pounds, a pushing/pulling restriction of no more than 50 pounds of force, and a bending restriction of no more than three hours a day. Complainant also asserts that the medical center suggested she see her personal physician for further information. Later, on or about August 11, 2015, Complainant visited her OBGYN and was placed on a lifting restriction of no more than 25 pounds for the remainder of her pregnancy (through February 14, 2016.) Evidence shows that Respondent initially permitted Complainant to return to work and perform duties within her work restrictions. However, evidence suggests that the following day, [REDACTED] (LNU) informed Complainant that Respondent was unsure whether they could continue accommodating her restrictions. Evidence shows that Complainant asked Respondent why it permitted a LPN named [REDACTED] (LNU) to remain on the schedule after being placed on work restrictions related to a surgery, but could not accommodate her restrictions. Complainant asserts that [REDACTED] told her that "they had work for her, but not for [Complainant]" and that she would have to leave after the completion of her current task. Complainant asserts that she spoke with Respondent on or about August 21, 2015 and requested to return to work, but Respondent refused to return Complainant to the schedule citing that "there was no guarantee that she would never be required to lift more than 25 pounds." While Complainant asserts that Respondent permitted several other Home Health Aids including but not limited to [REDACTED], [REDACTED] (LNU,) and [REDACTED] (LNU) to perform light duty office tasks, Respondent removed Complainant from the schedule.

Despite Respondent's assertions, there is insufficient evidence to support their claims as alleged. Rather, Complainant provided the names of several employees who were accommodated with a similar ability or inability to work for a short period of time. While Respondent asserts that it treated Complainant the same as "any other individual who is unable to perform his or her duties due to medical restrictions," it failed to rebut Complainant's assertions that it accommodated several other employees with similar abilities or disabilities to work. Simply stated, there is sufficient evidence to believe that Respondent failed to treat Complainant the same as it treated other similarly-situated temporarily impaired employees with similar abilities or disabilities to work. Moreover, as Respondent's rationale for removing Complainant from the schedule appears to be pretext for unlawful discrimination on the basis of pregnancy, probable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910-IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 28, 2015

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission